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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

HELEN YU, as Trustee, etc., Plaintiff and Respondent, v. BROADWAY HOLLYWOOD HOMEOWNERS ASSOCIATION, et al., Defendants and Appellants.	B280977 B284599 (Los Angeles County Super. Ct. No. BC553215)

APPEALS from an order and a judgment of the Superior Court of Los Angeles County, Mel Red Recana and Gregory Keosian, Judges. Affirmed.

Keith A. Fink & Associates, Keith A. Fink, Olaf J. Muller for Defendants and Appellants.

Miller Barondess, James Goldman for Plaintiff and Respondent.

An owner of a condominium in a common interest development sued the homeowners association for declaratory relief, alleging the association violated its governing documents by failing to offer valet parking, and interfered with a homeowners board election by (1) sending an attorney letter to homeowners regarding ongoing litigation between the owner and the association and (2) committing 11 other acts. The association specially moved to strike the election interference cause of action under Code of Civil Procedure section 425.16, the anti-SLAPP statute, which provides an expeditious means to strike a meritless cause of action that threatens to chill public participation.[1] The trial denied the association's motion but we reversed that order and remanded the matter for further proceedings.

While the appeal was pending, a bench trial on the alleged parking violation determined that the association had violated its governing documents by failing to offer off-site valet parking.

On remand, the trial court accepted further briefing and evidence on the association's anti-SLAPP motion and after another hearing again denied the motion and entered judgment for the owner.

The association appeals both the judgment and order denying its anti-SLAPP motion. It contends the trial court misconstrued its governing documents regarding parking, had no jurisdiction to consider additional evidence on the anti-SLAPP motion, erred in denying that motion, and abused its discretion in

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[1] SLAPP is an acronym for Strategic Lawsuit Against Public Participation. Further statutory references will be to the Code of Civil Procedure unless otherwise indicated.

awarding Yu attorney fees. We disagree with each contention and affirm both the order denying the association's anti-SLAPP and the judgment.

BACKGROUND

I. Factual Background

Broadway Hollywood Building

The Broadway Hollywood is a 10-story historical building on the corner of Hollywood Boulevard and Vine Street in Hollywood, a noted tourist destination. It was constructed in 1927 and used as a department store for several decades before being abandoned in 1987 and remaining vacant for the next 18 years. The building occupies the entire lot on which it sits, and was not designed to accommodate on-site parking.

In an effort to revitalize the Hollywood area and convert the older, once deemed obsolete building to modern use, the City of Los Angeles issued conditional use permits authorizing refurbishment and modernization of the Broadway Hollywood. As part of reconstruction, the building's sub-basement, basement, and portions of the first and second floors were converted from floor space to parking. Because the building's physical constraints prohibited standard parking arrangements, innovations were proposed, such as elevators by which parking attendants could move vehicles from level to level and mechanical lifts for the future stacking of two cars in spaces that could otherwise accommodate only one.

Conditional Use Permit and Parking Variance

Even with such innovations, however, the building still could not be refurbished in such a way as to comply with city parking codes. The city found that the building was located in the "high-density Hollywood Area of Los Angeles," which was

deficient in available parking, and that "[a]llowing parking to be provided on site for use of individuals visiting the building is a substantial property right possessed by other properties in the vicinity." The city found that granting a variance to parking codes was "necessary in a region with a high dependence on individually owned automobiles," would "contribute to the reduction of congested street parking," and would impose no "adverse impacts on the adjoining properties."

In a conditional use permit (CUP) issued by the city's Department of City Planning on July 14, 2005, the city granted, as pertinent here, "a Variance from Section 12.21-A, 5(d) of the Los Angeles Municipal Code, to permit 'Attended Commercial Parking Lots' for the proposed residential units in lieu of any required parking."

Condition No. 8

The CUP came with certain conditions, among them Condition No. 8, stated that "Valet service shall be made available to residents and customers of the facility 24 hours a day, seven days a week."[2]

Master Covenant

To issue the variances the city required that the developer, 1645 Vine Real Estate, LLC, execute and record a master covenant that would constitute the developer's "acknowledgment and agreement to comply with all the terms and conditions established" in the site plan review approving the CUP. The agreement was to "run with the land and be binding on any

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[2] Condition No. 9(b) stated that "Signs shall be conspicuously posted both inside and outside the location advising patrons of the availability and location of on-site, valet and offsite parking."

subsequent owners." The developer recorded the master covenant on August 2, 2005.

"Governing Documents"

The Broadway Hollywood Homeowner's Association (the association) adopted the master covenant as one of its "governing instruments." Also included in the governing instruments were the CUP, a Declaration of Covenants, Conditions, and Restrictions (CC&R's), and a residential handbook.

Valet Service

In 2007, the developer entered into a "parking agreement with Coast Parking, Inc.," whereby Coast agreed to "secure not less than twenty-five (25) offsite parking spaces for its valet operations solely for the benefit of the Property," "on a 24 hours a day, 365 day[s] a year basis," for a monthly fee of $2,500.

Sticker Program

In 2008, the association ended off-site valet parking for visitors to the building and instead issued one or two parking stickers to each tenant depending on whether that tenant's unit had one or two bathrooms. Visitors to the building were allowed to park in the building only if a tenant relinquished his or her parking sticker to the visitor. Valets were still employed to operate the facility's vehicle elevators and lifts, but were instructed not to park any vehicle that did not bear a sticker.

II. Complaint

By 2013, Helen Yu, the principal of an entertainment law firm with an office in the Broadway Hollywood, and trustee of the YL Trust, which owns the office, had become dissatisfied with several of the association's policies, including its parking policy. She thereafter ran for election to a one-year term on the association's executive board (the 2013 election), but was

defeated in a 5-way race, obtaining only 36 votes compared to the other candidates' 41 to 44 votes.

Yu sued the association and its five board members on the trust's behalf, seeking in three causes of action an injunction, a declaration that the 2013 election was void due to association interference, and damages against the board members for breach of fiduciary duties owed to association members.

Yu ran for election to the board again in 2014, while the litigation was pending, but this time gained only six votes, and was soundly defeated. She then amended her complaint, renumbering the third cause of action—for breach of fiduciary duty—as the new fourth cause of action, and replacing it with a new third cause of action for interference in the 2014 election.

In the first amended complaint, which is operative, Yu sought in the first cause of action a declaration that the association's parking sticker program violated the CUP by effectively depriving association members who conducted business at the Broadway Hollywood the right to have valet parking service available to their customers. In her second and third causes of action Yu alleged the association interfered with the 2013 and 2014 elections, respectively. And in her fourth cause of action Yu sought damages for breach of fiduciary duty.

The trial court sustained without leave to amend the association's demurrer to Yu's second and third causes of action, concerning election irregularities, finding them to be moot because the 2013 and 2014 elections had been superseded by subsequent elections. And the court granted summary adjudication in favor of the association on Yu's fourth cause of action, for breach of fiduciary duty. Neither of those rulings is before us on appeal.

The HOA also specially moved to strike the third cause of action, which the trial court granted. We reversed that ruling and remanded the matter for further proceedings. The trial court then denied the motion, which order the association appeals in the "second SLAPP appeal," which will be discussed below.

III. Trial

Yu's first cause of action was tried to the court. The court received into evidence the association's governing documents, including the master covenant, CUP, CC&R's, and Residential Handbook, and heard testimony from Yu; Ryan Palos, the association's general manager; and Robert Mansell, a member of the association's board.

Yu testified that because her office in the Broadway Hollywood had only one bathroom she was issued only one parking sticker. Her clients were therefore unable to park in the building, and the association failed to provide them valet parking service. She testified that "it's almost impossible to find even a parking space" within walking distance of the building.

Palos testified the association discontinued valet parking service for patrons because few association members used the service. He also testified the cost of providing parking service to guests would be $3,500 per month, less any parking fee charged to the building's guests.

IV. Statement of Decision

On October 6, 2016, the trial court issued a proposed statement of decision and judgment in which it concluded that the association's parking sticker program failed to comply with the master covenant or CUP. The court found enforcement of the master covenant would not be impractical or impose an undue financial burden on the association, and ordered that the sticker

program cease and that the association "take appropriate steps to promulgate a valet parking system available to all residents and customers."

In November 2016, the trial court overruled the association's objections to its proposed statement of decision, ordered the proposed statement become the final statement of decision, and entered judgment in Yu's favor. In January 2017, the court denied the association's motion to vacate the judgment. In March 2017, the court awarded Yu $114,000 in attorney fees.

In further posttrial proceedings the parties discussed the status of Yu's other causes of action, and the trial court indicated that in light of our opinion in the prior appeal it would vacate its ruling sustaining the association's demurrers to Yu's second and third causes of action. In the end however the trial court did not do so, but instead stayed proceedings pending resolution of the second SLAPP appeal.

The association appealed from the trial court's entry of judgment on Yu's first cause of action.

DISCUSSION

I. Appeal No. B280977: Trial on Yu's First Cause of Action

A. The Judgment is Appealable

As a preliminary matter, Yu notes that the trial court's entry of judgment in her favor on her first cause of action does not constitute a final judgment in this case because the trial court indicated it would vacate its order sustaining the association's demurrer to her second and third causes of action. Yu nevertheless urges that we consider this appeal.

With exceptions, an appeal may be taken only from a final judgment. (Code Civ. Proc., § 904.1, subd. (a)(1).) " 'A judgment

is final "when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined." ' " (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304.) Here, the trial court's entry of judgment on Yu's first cause of action terminated the litigation on the merits and left nothing to be done but enforce the court's decree. Yu to this day has never appealed or otherwise challenged the court's rulings disposing of her second, third, and fourth causes of action, and nothing in our prior opinion, which dealt only with the association's special motion to strike the third cause of action, should be construed to imply those rulings remain open to appeal. We therefore conclude the court's judgment on Yu's fourth cause of action constitutes an appealable judgment.

B. The CUP and Master Covenant Obligate the Association to Provide Valet Parking

The association contends that Condition No. 8 merely requires that there be on-site parking, attended by valet drivers, and its parking sticker program constitutes a reasonable, good faith exercise of its discretion to select among various means of discharging this obligation. We disagree.

Common interest developments are subject to the provisions of the Davis-Stirling Common Interest Development Act (Davis-Stirling Act or Act), which in 2014 was recodified to section 4000 et seq. of the Civil Code. (Civ. Code, § 4000; *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 377.) The legal description of a common interest development must be set forth in a recorded declaration stating the name of the association "and the restrictions on the use or enjoyment of any portion of the common interest development

that are intended to be enforceable equitable servitudes." (Civ. Code, § 4250, subd. (a).)

"The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest . . . ." (Civ. Code, § 5975, subd. (a).)

"[G]iving deference to a development's originating CC&R's 'protects the general expectations of condominium owners "that restrictions in place at the time they purchase their units will be enforceable." ' " (*Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 264 (*Lamden*).) An equitable servitude will therefor be enforced " 'unless it violates public policy; it bears no rational relationship to the protection, preservation, operation or purpose of the affected land; or it otherwise imposes burdens on the affected land that are so disproportionate to the restriction's beneficial effects that the restriction should not be enforced.' " (*Id.* at p. 263.)

Here, it is undisputed that the Broadway Hollywood Homeowners Association is governed by a master covenant that incorporates the CUP, and thus provides that "Valet service shall be made available to residents and customers of the facility 24 hours a day, seven days a week." It is further undisputed that the association provides no off-site valet parking service, and the on-site service is limited to visitors of members who either relinquish their own parking stickers or have units with more than one bathroom. The association has therefore plainly failed to comply with the master covenant.

The association argues that the provision in Condition No. 8 requiring that "[v]alet *service*" be "made available to residents and customers of the facility" does not mean that off-site valet *parking* be available to all visitors. It is not clear what valet service other than parking the association believes is mandated by the master covenant, but absent extrinsic evidence to the contrary, of which there is none, we easily conclude that "valet service" in the CUP means valet parking.

The association argues its obligation is to provide parking only to those whose cars can fit within the building. We disagree. Condition No. 8 requires that valet service be provided "to residents *and* customers of the facility." As to residents having only one bathroom, the association's sticker program effectively rewrites the condition to afford parking to such residents *or* their customers. Such a limitation flatly contradicts the plain language of the condition. It is no remedy to allow a parking sticker to be transferred, because even assuming such transfers were somehow possible during any given business day they could still be made to only one guest at a time. Nothing in Condition No. 8 suggests that the drafters intended that customers to the building be restricted to serial visits.

Relying upon *Lamden*, *supra*, the association argues that courts must defer to its authority to select among various means for providing parking at the Broadway Hollywood.

In *Lamden*, a homeowner association's governing documents obligated the association to maintain the development's common areas free from termites and to repair any termite damage, but mandated no particular method of doing either. (*Lamden*, *supra*, 21 Cal.4th at p. 257.) In response to an infestation, the association's board, after consulting with

contractors and pest control experts, elected to "spot treat" for termites rather than fumigate. An association member sued the board, but the trial court rejected the plaintiff's challenge because the board had a rational basis for its decision. Our Supreme Court affirmed the trial court. It held that "[g]enerally, courts will uphold decisions made by the governing board of an owners association so long as they represent good faith efforts to further the purposes of the common interest development, *are consistent with the development's governing documents*, and comply with public policy." (*Id.* at p. 265, italics added.) Accordingly, the Court held, the trial court properly deferred to the board's "reasonable, good faith" decision on issues relating to common area maintenance and repair.

However, *Lamden* also cautioned that its holding should not be taken too far. It stated that its respecting the association's discretion under the declaration at issue to choose among modes of termite treatment did not "foreclose the possibility that more restrictive provisions relating to the same or other topics might be 'otherwise provided in the declaration[s]' [citation] of other common interest developments." (*Lamden*, *supra*, 21 Cal.4th at pp. 267-268.) The court stated that the declaration before it set forth "a general scheme for maintenance, protection and enhancement of value of the Development, one that entrusts to the Association the management, maintenance and preservation of the Development's common areas and confers on the Board the power and authority to maintain and repair those areas." (*Id.* at p. 268.) The association's obligation was thus "broadly cast," and conferred the discretion to "select . . . among available means for addressing the Development's termite infestation." (*Ibid.*) But nothing in its holding foreclosed community association

governance provisions that, "within the bounds of the law, might more narrowly circumscribe association or board discretion." (*Ibid.*; see *Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.* (2008) 168 Cal.App.4th 1111, 1123 [homeowners association has no discretion to implement procedures that are inconsistent with the plain meaning of governing documents].)

Here, the governing documents circumscribe the association's discretion to provide parking for visitors to the Broadway Hollywood by prescribing that valet service be provided to "residents and customers." The covenant grants no discretion to the association to abrogate valet parking, to grant parking service only to residents *or* customers, or to grant only serial parking.

The association argues that because an equitable servitude must touch and concern the land it burdens, and must therefore relate to use of the land itself, a servitude such as Condition No. 8 cannot require that a burden extend to an off-site parking facility. We do not necessarily disagree. But provision of parking for visitors to the Broadway Hollywood directly relates to—is in fact necessary to—use of the land. That the on-site burden may be satisfied by off-site activity does not mean the burden itself falls off-site.

The association argues it would be an unreasonable burden to provide unlimited, unrestricted parking to all building visitors. We disagree.

To the extent that determination of the respective burdens and benefits of off-site valet parking requires resolution of issues of fact, we defer to the trial court, which found the burden, which is primarily financial, was not disproportionate to the benefit returned, i.e., the grant of a variance to permit use of the land.

To the extent the association argues that as a matter of law it is unreasonable to require unrestricted parking, we note that nothing in the record suggests that off-site valet parking would be voluminous, unduly expensive, or otherwise particularly onerous. In any event, the expense and inconvenience of valet parking was amply explored at trial, and we have no province or ability to reweigh the evidence.

C. Attorney Fees

In support of her motion for attorney fees, James Goldman, Yu's attorney submitted a declaration in which he identified the legal services he rendered, noted specific billing entries in his records that reflected time incurred on claims on which the association prevailed, and proffered a lodestar of $153,015.25. However, in consideration of the time incurred on claims on which she did not prevail, Yu sought only $112,549.75.

The trial court, noting that the claims on which Yu did not prevail were not raised to enforce the association's governing documents, found the amount requested to be reasonable and adequately supported by Goldman's time records, and further noted that Goldman had provided an "extremely detailed list of items for which [Yu was] not seeking compensation." The court noted that the association had not identified any specific entry for which fees should not have been claimed. It awarded the amount requested plus $2,440 for the time and costs incurred by Goldman in connection with the motion, for a total of $114,990.75.

The association argues the trial court erred in granting Yu attorney fees. We disagree.

"In an action to enforce the governing documents [of a common interest development], the prevailing party shall be

awarded reasonable attorney's fees and costs." (Civ. Code, § 5975, subd. (c); *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 779.) To determine who is a prevailing party, courts consider which party as a practical matter achieved its main litigation objectives. (*Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574.)

We review a trial court's attorney fee determination for abuse of discretion, examining " ' "whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' " (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1339; see *Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252, 260-261.)

" 'It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court . . . . [Citations.] The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.] The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, *the success or failure*, and other circumstances in the case.' " (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096, italics added.)

As our Supreme Court explained in *Serrano v. Priest* (1977) 20 Cal.3d 25, 49: "The 'experienced trial judge is the best judge of

the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.' "

Here, the trial court's determination that Yu prevailed on a practical level was not beyond the bounds of reason. Yu's primary objective in her first cause of action was to obtain a declaration that the association violated its governing documents by failing to provide off-site valet parking. She indisputably achieved this objective. All of her other claims were at least tangentially related to this claim.

The association argues Yu cannot be deemed the prevailing party because she achieved none of the objectives of her second, third or fourth causes of action. It argues that valet parking cannot have been Yu's main objective because only one-tenth of the verbiage in her complaint was devoted to it.

"When the time spent on successful and unsuccessful claims cannot be easily segregated, a negative multiplier can be applied to account for that partial success." (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 157.) But the degree of success is only one of a number of factors a trial court considers in awarding attorney fees. No authority mandates that the court discount a fee award because some claims prevailed while others did not.

Here, it appears that Yu's fee motion, and thus the trial court's order granting it, took into consideration the claims on which she did not prevail. Nothing in the record suggests that the award was arbitrary or that $115,000 was an exorbitant amount for a business case that proceeded all the way through trial.

II. Appeal No. B267052, the Second SLAPP Appeal

Ten days before the 2014 election, Olaf J. Muller, the association's attorney, sent a letter at the association's behest by overnight mail to all association members except Yu (the Muller letter). In the letter, Muller stated that Yu's claims in the 2013 litigation, which was ongoing, were facially defective and factually meritless, and the association had neither violated its bylaws nor interfered with the 2013 election. Muller stated the association had attempted to resolve the dispute, but Yu "made exceedingly clear that she does not wish to comply with the neighborly rules and regulations the rest of the Members live by, particularly with respect to valet parking and HOA elections." Muller stated that as a consequence of the Yu litigation, homeowners association fees could rise, and the homeowners could be required to disclose the existence of the litigation should they want to sell or refinance their condominiums.

Ten days later Yu gained only six votes, and was soundly defeated

A. First Amended Complaint

After the 2014 election Yu amended her complaint to insert a new third cause of action against the association, seeking a declaration that the association had violated its governing instruments "and/or statutory requirements" by interfering with the 2014 election in 12 ways. (The former third cause of action—for breach of fiduciary duty against association board members—became the new fourth cause of action.)

As the first alleged act of interference, Yu alleged the association directed Muller to send a letter to all members, save herself, to discourage them from voting for her. She alleged, as pertinent here, that the Muller letter falsely stated that her other

claims in the lawsuit were meritless, the association had violated no statute or rule relating to valet parking, and the association had attempted to address her concerns but she did not wish to comply with association rules. Yu alleged that contrary to the representations, her claims regarding valet parking were meritorious, and the association refused to discuss them in good faith.

Yu further alleged the association interfered with the 2014 election in 11 other ways.

Based on these allegations, Yu sought a declaration that the 2014 election was null and void.

B. The Association's Anti-SLAPP Motion

The association specially moved to strike Yu's third cause of action pursuant to section 425.16, arguing its conversation with Muller and the resulting Muller letter were protected exercises of its right of petition, and Yu could not prevail on the merits because any controversy regarding the 2014 election was moot because another election would occur before the litigation ended.

The trial court concluded that an anti-SLAPP motion cannot be granted when the "thrust" of the challenged cause of action concerns *un*protected activity, even if part of the cause of action arises from *protected* activity. The court therefore denied the association's motion. However, it indicated that had it reached the merits it would have concluded that plaintiff failed to demonstrate a reasonable probability of prevailing because trial and posttrial proceedings could not be concluded before the 2015 election, and the controversy was therefore moot. (On the same day, the court sustained the association's demurrer to the third

cause of action without leave to amend on the ground the controversy was moot.)

C. Prior Appeal

We reversed. By the time of appeal it was no longer disputed that section 425.16 reaches a mixed cause of action or that the allegations concerning the Muller letter arose from protected activity. We therefore had occasion to determine only whether the trial court correctly found that because the controversy was moot, Yu failed to establish a probability of prevailing on the merits.

We first concluded the controversy was not rendered moot for anti-SLAPP purposes by the passage of time during which Yu amended her complaint because in an anti-SLAPP analysis the viability of a cause of action is determined as of the time an action is filed, not when the motion to strike is filed. And in any event, even after the association moved to strike Yu's third cause of action adequate time yet remained before the 2015 election to determine the legitimacy of the 2014 election.

Similarly, Yu's third cause of action was not rendered moot—for anti-SLAPP purposes—when the trial court sustained the association's demurrer to it. (See, e.g., *Moore v. Liu* (1999) 69 Cal.App.4th 745, 751 [the merits of a section 425.16 motion must be evaluated even after the underlying complaint has been dismissed].)

We therefore concluded the trial court erred in finding Yu failed to demonstrate a probability of prevailing on the merits because the complaint was moot.

This did not mean Yu had affirmatively demonstrated a probability of prevailing on the merits. We held that questions remained on this issue. We observed that no evidence suggested

the Muller letter violated any association rule. Yu had argued on appeal that the letter violated Rule III(G) of the association bylaws, which provided that "[n]o member shall be provided access to Association media within thirty (30) days of an Association election for the purposes of campaigning for election of a Director. For purposes of [the rule], 'Association media' meant the Association's newsletters, internet websites and/or Association cable channel." But no evidence in the record suggested that the Muller letter was published on behalf of an association member for the purpose of campaigning for election of a director; that it was disseminated by way of an association newsletter, Web site, or cable channel; or even that it was disseminated within 30 days of the 2014 election, as Yu neither alleged nor offered evidence as to when that election had occurred; she alleged and declared only that the letter was sent "shortly before" the election.

Because in focusing on the mootness issue the parties had failed to explore the substantive demerits of Yu's complaint, we remanded the matter to the trial court "for further proceedings to determine whether Yu ha[d] a probability of prevailing on the portion of her third cause of action arising from protected activity."

D. Proceedings on Remand

By the time of remand the trial court had already concluded after a bench trial that the association violated its governing documents. The court thereafter accepted new evidence and argument on the anti-SLAPP issue. As pertinent here, Yu and her attorney submitted declarations in which they stated the association had eliminated valet parking services for customers and guests at the Broadway Hollywood, just as she

claimed in the lawsuit, but disputed her claim by way of the Muller letter. Yu and her attorney detailed how the letter was circulated by overnight mail just 10 days before the 2014 Election, was sent on behalf of a board member who was running against her, and was widely and nonspecifically addressed to the "Members of Broadway Hollywood," much like a newsletter. Yu and her attorney declared the letter contained false statements relating to the merits of her claims, her amenability to compromise, and her alleged non-compliance with association rules, and adopted the disparaging tone of a campaign flyer rather than the dispassion of an attorney communication. The letter was not sent to Yu.

The trial court concluded these irregularities established a prima facie case supporting Yu's claim that the association interfered with the 2014 election, and thus demonstrated Yu's probability of prevailing for anti-SLAPP purposes. The court therefore denied the association's motion.

DISCUSSION

The association contends the trial court erred by permitting Yu to offer new evidence in opposition to the anti-SLAPP motion, by reaching legal conclusions inconsistent with our prior order, and by finding that Yu established a probability of prevailing.

I. The Trial Court Properly Conducted Further Proceedings

The association argues the trial court was not permitted to accept further evidence because our remand order did not expressly direct it to do so. The argument merits little discussion. In our prior order we noted that the parties and court had focused on the mootness issue and left several issues unexplored, including such fundamental questions as whether

the Muller letter was published on behalf of an association member for the purpose of campaigning for election of a director, whether it was disseminated by way of an association newsletter, Web site, or cable channel, or even the date of the 2014 Election.

We remanded the matter "for further proceedings to determine whether Yu has a probability of prevailing on the portion of her third cause of action arising from protected activity."

When we remand a matter for nonspecific "further proceedings" to address an issue, we generally leave it to the trial court to determine what sort of proceedings would be fair and efficient. We almost never dictate exactly what type of proceedings should be conducted. This deference cannot be construed as a prescription or proscription of any specific procedure. When an appellate court is silent on such a matter, a trial court is free to manage its own processes.

In any event, we think it fairly obvious in context that to answer the deficits we identified in our opinion the trial court could reasonably require that the parties offer additional evidence addressing those deficits.

II. The Trial Court Did Not Contradict Our Prior Order

The association argues the trial court made findings that contradicted our prior holding that Yu could not prevail on the merits because the Muller letter violated no association rule.

We made no such holding. We stated only that questions remained on the issue, and because the evidence was in default further proceedings were needed.

III. On Remand, Yu Established a Probability of Prevailing.

To demonstrate a probability of prevailing on the merits, Yu was required to show her claims were " 'both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' " (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) A trial court must deny an anti-SLAPP motion if " ' "the plaintiff presents evidence establishing a prima facie case which, if believed by the trier of fact, will result in a judgment for the plaintiff." ' " (*Robinzine v. Vicory* (2006) 143 Cal.App.4th 1416, 1421.) At this stage of the proceedings, the plaintiff "need only establish that his or her claim has 'minimal merit' [citation] . . . ." (*Soukup*, at p. 291.) Although " 'the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim.' " (*Ibid*.)

Yu's third cause of action asserted that a current, justiciable controversy existed between herself and the association as to whether the association's communication with its attorney, and the attorney's subsequent communication with association members, violated Rule III(G). Her evidence indicated the Muller letter was circulated in such a way as to reasonably imply it was designed to influence the election on behalf of a current board member. It was addressed broadly, sent to everyone but Yu by overnight mail just 10 days before the 2014 Election, and contained statements about the merits of her claims

that turned out to be false, delivered in a tone suggestive of a campaign mailer.

We conclude Yu's evidence adequately established her probability of prevailing on the merits. Therefore, the trial court properly denied the association's motion.

DISPOSITION

The judgment and order denying the association's special motion to strike are affirmed. Yu is to recover her costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

* Associate Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.